



DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2023-005]

Oregon State Plan for Occupational Safety and Health; Proposed Final Approval, Request for Public Comment, and Notice of Opportunity to Request Informal Public Hearing

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed final approval for separable portion of State Plan; request for written comments; notice of opportunity to request informal public hearing.

SUMMARY: This document gives notice of the eligibility of the Oregon State occupational safety and health plan (State Plan) for determination under Section 18(e) of the Occupational Safety and Health Act of 1970 as to whether final approval of the State Plan over temporary labor camps should be granted. This notice of eligibility for an 18(e) determination applies only to coverage of temporary labor camps and does not affect or disturb the previous grant of final approval in 2005 as to all other issues covered by the Oregon State Plan. If an affirmative determination under section 18(e) is made, the Federal standard and enforcement authority will no longer apply to temporary labor camps.

DATES:

Written comments: Comments and requests for an informal hearing must be received by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Informal public hearing: Any interested person may request an informal hearing concerning the final approval of the State Plan over temporary labor camps. OSHA will hold such a hearing if the Assistant Secretary of Labor for Occupational Safety and

Health (Assistant Secretary) finds that substantial objections have been filed. After the close of the comment period, the Assistant Secretary will review all comments submitted; will review all hearing requests; and will schedule an informal hearing if a hearing is required.

Publication in Oregon: No later than 10 days following the date of publication of this notice in the *Federal Register*, Oregon shall publish, or cause to be published, reasonable notice within the State containing the same information contained herein.

ADDRESSES:

Written comments: You may submit written comments or requests for an informal hearing, identified by Docket No. OSHA-2023-005,¹ electronically at www.regulations.gov, which is the Federal e-Rulemaking Portal. Follow the online instructions for making electronic submissions.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA 2023-005). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at www.regulations.gov. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public or submitting materials that contain personal information (either about themselves or others), such as Social Security Numbers and birthdates. Submissions must clearly identify the issues addressed and the positions taken.

Docket: To read or download comments or other material in the docket, go to Docket No. OSHA-2023-005 at www.regulations.gov. All comments and submissions are listed in the www.regulations.gov index; however, some information (e.g., copyrighted material) is not publicly available to read or download through that website. All

¹ Documents submitted to the docket by OSHA or stakeholders are assigned document identification numbers (Document ID) for easy identification and retrieval. The full Document ID is the docket number plus a unique four-digit code.

comments and submissions are available for inspection and, where permissible, copying, by appointment, at the OSHA Docket Office. Contact the OSHA Docket Office, U.S. Department of Labor; telephone: (202) 693-2350 (TTY number: (877) 889-5627).

Electronic copies of this *Federal Register* document are available at www.regulations.gov. Other information about the Oregon State Plan is posted on the State's website at <https://osha.oregon.gov>.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Contact Frank Meilinger, Director, Office of Communications, U.S. Department of Labor; telephone (202) 693-1999; email: Meilinger.Francis2@dol.gov.

For general and technical information: Contact Douglas J. Kalinowski, Director, OSHA Directorate of Cooperative and State Programs, U.S. Department of Labor; telephone (202) 693-2200; email: Kalinowski.Doug@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq. (“OSH Act” or “Act”), provides that states which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a state plan (“State Plan” or “Plan”). Procedures for State Plan submission and approval are set forth in regulations at 29 CFR part 1902. If the Assistant Secretary of Labor for Occupational Safety and Health (“Assistant Secretary”) finds that the State Plan satisfies, or will satisfy, the criteria set forth in Section 18(e) of the Act and 29 CFR 1902.3 and 1902.4, “initial approval” is granted.²

² Section 18(c) provides: The Secretary shall approve the plan submitted by a State under subsection (b), or any modification thereof, if such plan in his judgement -- (1) designates

A state may commence operations under its Plan after the initial approval determination is made, but the Assistant Secretary retains discretionary concurrent Federal authority over occupational safety and health issues covered by the Plan during the initial approval period as provided by Section 18(e) of the Act. OSHA regulations provide that in states with initially-approved Plans, OSHA and the state enter into an operational status agreement describing the division of responsibilities between them and suspending concurrent Federal authority, as deemed appropriate (29 CFR 1954.3).

If, after a period of no less than three years, the Assistant Secretary determines that the State Plan has satisfied and continues to meet all criteria in Section 18(e) of the OSH Act, the Assistant Secretary may make an affirmative determination under Section 18(e) of the Act (referred to as “final approval” of the State Plan), which results in the relinquishment of concurrent Federal authority in the state with respect to occupational safety and health issues covered by the Plan (29 U.S.C. 667(e)). Procedures for Section 18(e) determinations are found in 29 CFR part 1902, subpart D. In general, to be granted

a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State, (2) provides for the development and enforcement of safety and health standards relating to one or more safety or health issues, which standards (and the enforcement of which standards) are or will be at least as effective in providing safe and healthful employment and places of employment as the standards promulgated under section 6 which relate to the same issues, and which standards, when applicable to products which are distributed or used in interstate commerce, are required by compelling local conditions and do not unduly burden interstate commerce, (3) provides for a right of entry and inspection of all workplaces subject to the Act which is at least as effective as that provided in section 8, and includes a prohibition on advance notice of inspections, (4) contains satisfactory assurances that such agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such standards, (5) gives satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards, (6) contains satisfactory assurances that such State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in an approved plan, (7) requires employers in the State to make reports to the Secretary in the same manner and to the same extent as if the plan were not in effect, and (8) provides that the State agency will make such reports to the Secretary in such form and containing such information, as the Secretary shall from time to time require (29 U.S.C. 667(c)).

final approval, actual operation of the occupational safety and health Plan by the state must be at least as effective as the Federal OSHA program in all areas covered under the State Plan.

II. History of the Present Proceedings

A. Final Approval of the Oregon State Plan Except as to Temporary Labor Camps

The Oregon State Plan, administered by the Oregon Department of Consumer and Business Services, received initial approval on December 28, 1972 (37 FR 28628). On January 23, 1975, OSHA and the State of Oregon entered into an Operational Status Agreement (OSA), which suspended the exercise of concurrent Federal authority in Oregon in all except specifically identified areas (40 FR 18427). On December 16, 2004, OSHA published notice (69 FR 75436) that the Oregon State Plan was eligible for a determination as to whether final approval of the Plan should be granted under Section 18(e) of the Act for all issues covered by the Plan, with the exception of temporary labor camps in agriculture, general industry, construction, and logging. The notice stated that the issue of temporary labor camps was being excluded from final approval at that time pending resolution of OSHA's concerns regarding the effectiveness of Oregon's temporary labor camps standards.

After allowing a period for comment, the Assistant Secretary subsequently granted the Oregon State Plan final approval on May 12, 2005, with respect to all issues covered by the Plan except temporary labor camps (70 FR 24947). In granting final approval, the Assistant Secretary made an affirmative determination that the Oregon State Plan had applied and implemented, in actual operations, each of the criteria set forth in Section 18(e) of the Act and 29 CFR 1902.37 as to all portions of the State Plan except temporary labor camps. The Assistant Secretary's findings discussed, among other things, standards, variances, enforcement, the public employee program, staffing and resources, records and reports, voluntary compliance, and injury/illness rates. The

Assistant Secretary determined that as to each matter, the State Plan was at least as effective as the Federal program and met the statutory and regulatory requirements for final approval.

As a result of this affirmative determination under Section 18(e) of the Act, OSHA's standards and enforcement authority over all worksites covered by the Oregon State Plan (except temporary labor camps) was relinquished. The OSA, effective January 23, 1975, and as amended, effective December 12, 1983 and November 27, 1991, was superseded by the grant of final approval, except that it continued to apply to temporary labor camps in agriculture, general industry, construction, and logging.

B. Oregon's Temporary Labor Camps Standards

OSHA had originally approved the Oregon State Plan's Temporary Labor Camps standard on October 1, 1976 (41 FR 43485), concluding that the standard was at least as effective as the comparable Federal standard. The standard remained substantively unchanged until 2000, when the Oregon State Plan, on its own initiative through Administrative Order 5-2000, adopted revisions to the State's Agricultural Labor Housing (ALH) and Related Facilities standard (Division 4/J, OAR 437-004-1120) and the Labor Camps standard (Division 2/J, OAR 437-002-0142). Some of the updates to the rules included regrouping subjects into more logical categories, synchronizing with the Oregon Building Codes Division, and changing requirements for garbage and refuse, emergency exits, bedding, and ratios of toilet, handwashing, and bathing facilities.

OSHA responded to the Oregon State Plan on February 28, 2001, identifying instances in which OSHA had concerns that the State's standards were less effective than the comparable Federal rules. Over the next several years, OSHA, the Wage and Hour Division (WHD),³ and the Oregon State Plan continued to engage on this matter in order

³ In January 1997, the Secretary of the Department of Labor issued Secretary's Orders 5-96 (62 FR 107) and 6-96 (62 FR 111), transferring some of OSHA's authority to enforce

to resolve the identified concerns.

While those conversations were ongoing, OSHA and the Oregon State Plan began the separate process of Section 18(e) final approval with the issuance of a *Federal Register* notice on December 16, 2004 (69 FR 75436). However, as noted above, the proposed grant of final approval excluded temporary labor camps due to OSHA's then-unresolved concerns regarding the effectiveness of Oregon's temporary labor camps standards. The 2004 notice of eligibility for final approval provided that OSHA intended to work with Oregon to resolve all effectiveness issues with regard to its two temporary labor camps standards so that final approval could be extended to all covered issues (69 FR 75438).

After further informal discussions with OSHA and WHD, along with feedback from its stakeholders, the Oregon State Plan subsequently filed changes to its ALH and Related Facilities and Temporary Labor Camps standards on March 24, 2008 (Administrative Order 4-2008), to make the rules as effective as Federal OSHA's. Some of the major changes to the ALH and Related Facilities rule (OAR 437-004-1120) included updated requirements for: space and ceiling heights (with effective dates of 2018 in some cases); screens; minimum window area; shower and sink ratios; nearby livestock operations; ground clearance; heating equipment; water pressure; laundry facilities; garbage pickup; and privy distance from housing. References to tents were also removed. For the Temporary Labor Camps rule (OAR 437-002-0142), Oregon removed the entire text of the rule and added new language stating that the ALH and Related Facilities rule at OAR 437-004-1120 applies to general industry, construction, and forest

the Federal Field Sanitation standard (29 CFR 1928.110) and Temporary Labor Camps standard (29 CFR 1910.142) to what would later become WHD (see 74 FR 58836). Accordingly, WHD had an interest in the Oregon State Plan's temporary labor camps enforcement activity and OSHA consequently sought WHD's input in evaluating the standards.

activities as well as agriculture, except for a few limited paragraphs that address certain camp registration and closure requirements. Following further communication with OSHA, Oregon subsequently made additional changes to the ALH and Related Facilities rule on January 26, 2009 (Administrative Order 1-2009), to reflect changes in heater technology, clarify effective dates, and to require enclosed, screened shelters for cooking and eating facilities.

All changes promulgated by Oregon Administrative Orders 4-2008 and 1-2009 were effective as of January 1, 2018. On August 21, 2018, at the quarterly monitoring meeting, the Oregon State Plan Administrator requested that OSHA review and consider removal of the temporary labor camps exception to the State Plan's 18(e) final approval status. WHD approved the changes on December 3, 2020, and the OSHA X regional office approved the rule and recommended removal of the temporary labor camps exception to Oregon's 18(e) final approval status on December 18, 2020.⁴

Subsequently, on May 9, 2022, in response to a March 10, 2020 Executive Order issued by Oregon Governor Kate Brown, the Oregon State Plan adopted new "Rules to Address Employee and Labor Housing Occupant Exposure to High Ambient Temperatures" (pursuant to Administrative Order 3-2022), to take effect on June 15, 2022. Specifically, Administrative Order 3-2022 established a new Heat Illness Prevention standard applicable to general industry workers (OAR 437-002-0156), established a new Heat Illness Prevention standard applicable to agricultural workers (OAR 437-004-1131), and amended Oregon's ALH and Related Facilities standard (OAR 437-004-1120) to add new provisions on heat illness prevention in labor housing.

⁴ OSHA's December 18, 2020 approval letter referenced only Oregon's ALH and Related Facilities standard, OAR 437-004-1120. However, OSHA intended to also approve the separate Temporary Labor Camps standard, OAR 437-002-0142, which is identical to the ALH and Related Facilities standard except as to certain limited provisions. Accordingly, the OSHA X regional office sent a subsequent approval letter on May 5, 2022, to clarify that the general industry provisions for temporary labor camps addressed by Administrative Order 4-2008 were also approved.

OSHA approved this state-initiated change on June 3, 2022, finding the rules to be at least as effective as and more stringent than Federal requirements.

III. Determination of Eligibility

This *Federal Register* document announces the eligibility of the Oregon State Plan for a final approval determination under Section 18(e) as to temporary labor camps in agriculture, general industry, construction, and logging. 29 CFR 1902.39(c) requires that notice of this determination of eligibility be published in order to seek public input prior to the Assistant Secretary's decision.

Pursuant to 29 CFR 1902.37(a), the Assistant Secretary, as part of the final approval process, must determine if the State has applied and implemented all the specific criteria and indices of effectiveness of §§ 1902.3 and 1902.4. The Assistant Secretary must make this determination by considering the factors set forth in § 1902.37(b). As documented in the 2004 notice of eligibility for final approval (69 FR at 75438) and the 2005 notice of final approval (70 FR 24947), the Assistant Secretary has already published findings and conclusions as to the vast majority of the specific criteria identified in §§ 1902.3, 1902.4, and 1902.37(b), none of which are presently at issue. Accordingly, the only determination at issue now is whether the Oregon State Plan's temporary labor camps standards are at least as effective as the Federal standards, such that final approval should be extended to that coverage area (see generally §§ 1902.3(c)(1), 1902.4(b), and 1902.37(b)(3) and (b)(4)).

OSHA is satisfied that the Oregon State Plan's amended temporary labor camps standards, as summarized above, indicate that the applicable regulatory indices and criteria are being met. The Assistant Secretary accordingly has made an initial determination that the Oregon State Plan is eligible for an affirmative Section 18(e) determination as to temporary labor camps. The determination of eligibility is based upon OSHA's findings that the criteria of Section 18(c) of the Act are being applied in actual

operation in a manner at least as effective as the Federal program.

OSHA's regulations provide that after making an initial determination of eligibility for final approval, a notice must be published in the *Federal Register* and interested parties must be provided an opportunity to submit in writing, data, views, and arguments on the proposed 18(e) determination within 35 days after publication (29 CFR 1902.39(e)). Further, the regulations provide that any interested person or the affected State may request an informal hearing on the proposed affirmative 18(e) determination whenever particularized written objections thereto are filed, and that OSHA must afford an opportunity for an informal hearing if the Assistant Secretary finds that substantial objections have been filed (29 CFR 1902.39(f)–(g)). In order to encourage the submission of informed and specific public comment, OSHA encourages commenters to review the documents contained in Docket No. OSHA-2023-005, which can be accessed electronically at www.regulations.gov, and to review Oregon's amended ALH and Related Facilities standard (Division 4/J, OAR 437-004-1120) and Labor Camps standard (Division 2/J, OAR 437-002-0142), available to the public on the State's website at <https://osha.oregon.gov>.

IV. Effect of Section 18(e) Determination

If the Assistant Secretary, after review of any written comments received and the results of any informal hearing if requested and held, determines that the statutory and regulatory criteria applicable to the Oregon State Plan's temporary labor camps standards are being applied in actual operations, final approval will be granted and Federal standards and enforcement authority will cease to be in effect with respect to temporary labor camps, as provided by Section 18(e) of the Act and 29 CFR 1902.42(c). In the event an affirmative Section 18(e) determination is made by the Assistant Secretary following the proceedings described in the present notice, a notice will be published in the *Federal Register* in accordance with 29 CFR 1902.43. The notice will specify the

issues as to which Federal standards and enforcement authority are withdrawn. The notice will also state that if continuing evaluations show that the State has failed to maintain a program which is at least as effective as the Federal program, or that the State has failed to submit program change supplements as required by 29 CFR part 1953, the Assistant Secretary may revoke or suspend final approval and reinstate Federal enforcement authority or, if the circumstances warrant, initiate action to withdraw approval of the State Plan.

V. Documents of Record

All information and data presently available to OSHA relating to this Section 18(e) proceeding have been made a part of the record in this proceeding and placed in the OSHA Docket Office. These documents have also been posted electronically at *www.regulations.gov*, which is the Federal e-Rulemaking portal. The contents of the record and all comments and submissions are available for inspection and, where permissible, copying, by appointment, at the OSHA Docket Office; telephone: (202) 693–2350 (TTY number: (877) 889–5627).

The contents of the record are also available for in-person inspection by contacting: Office of the Regional Administrator, U.S. Department of Labor—OSHA: telephone: (206) 757-6700, fax: (206) 757- 6705; and Department of Consumer and Business Services, Oregon Occupational Safety and Health Division: telephone: (503) 378-3272, fax: (503) 947-7461.

To date, the record on this final approval determination includes: Oregon Administrative Order 5-2000; OSHA’s letter to Oregon OSHA dated February 28, 2001; Oregon Administrative Order 4-2008 and related documentation; OSHA’s letter to Oregon OSHA dated October 3, 2008; Oregon Administrative Order 1-2009 and related documentation; OSHA’s memo to Wage and Hour Division recommending approval dated November 26, 2019; Wage and Hour Division’s memo to OSHA concurring with

approval dated December 3, 2020; OSHA's letter to Oregon OSHA approving AO 4-2008 and AO 1-2009 in agriculture dated December 18, 2020; OSHA's letter to Oregon OSHA clarifying approval of AO 4-2008 in general industry, dated May 5, 2022; Oregon Administrative Order 3-2022 and related documentation; and OSHA's letter to Oregon OSHA approving Administrative Order 3-2022, dated June 3, 2022.

VI. Public Participation

The Assistant Secretary's decision whether to grant an affirmative 18(e) determination to the Oregon State Plan for labor camps coverage will be made after careful consideration of all relevant information presented in the rulemaking. To aid the Assistant Secretary in making this decision, OSHA is soliciting public participation in this process. Interested parties are encouraged to submit all relevant information, views, data, and arguments related to the indices, criteria, and factors presented in 29 U.S.C. 667(c) and 29 CFR part 1902, as they apply to the Oregon State Plan's temporary labor camps coverage.

Notice in the State of Oregon: Oregon is required to publish reasonable notice of the contents of this *Federal Register* notice within the State no later than 10 days following the date of publication of this notice (29 CFR 1902.39(c)).

Written comments: OSHA invites interested persons to submit written data, views, and comments with respect to this proposal to grant an affirmative Section 18(e) determination of the Oregon State Plan's temporary labor camps coverage. When submitting comments, persons must follow the procedures specified above in the sections titled "**DATES**" and "**ADDRESSES**". Submissions must clearly identify the issues addressed and the positions taken. Comments received by the end of the specified comment period will become part of the record and will be available for public inspection and copying at the OSHA Docket Office, as well as online at www.regulations.gov (Docket Number OSHA-2023-005). As required by OSHA's regulations, the State of

Oregon will be afforded the opportunity to respond to each submission before the Assistant Secretary makes a final decision (29 CFR 1902.39(e)).

Informal public hearing: Pursuant to 29 CFR 1902.39(f), interested persons may request an informal hearing concerning the proposed Section 18(e) determination. Such requests also must be received on or before [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Such requests must present particularized written objections to the proposed Section 18(e) determination. OSHA will hold the informal hearing if the Assistant Secretary finds that substantial objections have been filed (29 CFR 1902.39(g)). As required by regulation, the Assistant Secretary will decide whether an informal hearing is warranted within 30 days of the last day for filing written views or comments and, if so, will publish notice of the time and place of the scheduled hearing at that time. Commenters should note that a request for an informal hearing and a particularized written objection to the proposal is not the same as a substantial objection and OSHA will only hold a hearing if the Assistant Secretary finds that substantial objections have been filed. The Assistant Secretary will consider all written comments submitted when determining whether a substantial objection has been filed.

Certification of the hearing record and Assistant Secretary final decision: Within a reasonable time after the close of the comment period (if no hearing is held) or after the certification of the record (if a hearing is held), after consideration of all relevant information which has been presented, the Assistant Secretary will publish a decision on the proposed affirmative 18(e) determination over temporary labor camps in the *Federal Register* (29 CFR 1902.41(a)).

VII. Federalism

Executive Order 13132, “Federalism,” emphasizes consultation between Federal agencies and the States and establishes specific review procedures the Federal

government must follow as it carries out policies which affect state or local governments. OSHA has included in the Background section of today's request for public comments an explanation of the relationship between Federal OSHA and the State Plans under the OSH Act. Although the specific consultation procedures provided in section 6 of Executive Order 13132 are not mandatory for final approval decisions under the OSH Act because they neither impose a burden upon the state nor involve preemption of any state law, OSHA has nonetheless consulted extensively with Oregon on the matter of final approval as to temporary labor camps.

VIII. Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) that this proposed final approval determination, if finalized, will not have a significant economic impact on a substantial number of small entities. Final approval of Oregon's temporary labor camps coverage would not place small employers in Oregon under any new or different requirements, nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved Plan.

Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC, authorized the preparation of this notice. OSHA is issuing this notice under the authority specified by Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), Secretary of Labor's Order No. 8-2020 (85 FR 58393 (Sept. 18, 2020)), and 29 CFR parts 1902 and 1956.

Signed in Washington, DC, on February 28, 2023.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023-05075 Filed: 3/10/2023 8:45 am; Publication Date: 3/13/2023]